

Administrative - Internal Use Only

29 May 1975

Comments on Draft "Security Classification Act of 1975"

A. General Comments

1. At the risk of pointing out the obvious, the entire paper is poorly organized and poorly written. It appears that the author(s) have only a limited knowledge of the Intelligence Community and how it functions and less knowledge of the concept of intelligence and the nature and sources of the materials with which we work. Because of the poor organization it is difficult to evaluate the paper.

2. Dissemination controls are totally ignored in the Bill.

3. The term "originally classified" is used throughout. No provision is made for upgrading in the event that the original classification is wrong or becomes wrong because of circumstances after the event.

4. Of the 42 pages in the Bill, 16 are devoted to the Classification Review Commission which, to me at least, speaks volumes on the reason behind its proposal. The Bill makes no mention of desirable qualifications of members of the all-powerful Commission beyond their political affiliation and the requirement that they not engage in any other activity. Also, the provision in (I), p. 36 for the Commission to investigate inquiries initiated by private citizens appears to infringe upon the FOIA and would likely result in the Commission being inundated by such requests.

5. The Bill does not mention film in defining "official information", p. 6, (3). Also, there is no definition of "document".

B. Pp. 8-12

1. The job of assigning classification authority (p. 8 (4), compared to existing procedures) does not appear to be particularly burdensome, assuming that computer-produced lists will be used. But making the lists available to such a large group (p. 9 (B)) could spell trouble. This may not matter much to the DDI but it most certainly will to the DDO. However, DDI employees could be subjected to harassment.

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2. The procedures for classification could prove to be burdensome, particularly because of the provisions for accountability and the requirements for an automatic declassification date (p. 10 (C)). A loophole is provided through use of the phrase "if possible", although nothing is said about the manner of indicating on the document that it is not possible to provide a date at the time of classification. Also, there is no mention of classification markings on individual pages.

3. The disciplinary action called for at the top of p. 12 (part of text not available) appears to be an unwarranted intrusion upon the authority of individual agencies and an unnecessary burden. Considerable time would probably have to be spent in defining violations and then Agency regulations and recommended disciplinary action must be approved by the Commission.

C. Pp. 12-17

1. The classification criteria do not appear adequate to protect DDI information. Throughout, the criteria stress "specific details", thus ignoring the fact that much classified information is lacking in specificity, and creating a situation where reasonable men can argue endlessly about the meaning of the term. This requirement could rule out the classification of concepts, original plans, some analyses, etc. The vagueness of the term could also lead to serious over or under classification. Also, the definitions do not appear to be mutually exclusive and are too narrow to include within their purview the large amount of diverse material from innumerable sources used by DDI components in the production of reports. In many cases the mere fact that an operation or undertaking is occurring or is being contemplated merits classification although there are few details available. The definitions in [] are far more usable as they do provide for the exercise of individual judgment based on the background, knowledge, and experience of the individual intelligence officer.

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2. Some of the examples under the Top Secret classification are not now thusly classified and in many instances need not be so classified.

3. Intelligence sources or methods (p. 13, (D)), are mentioned only in the subsection on Top Secret classification, although they can also be classified at a lower level.

4. The example of Secret information contained in (A) on p. 14 is particularly difficult to interpret. Information can be compromised to varying degrees. How is one to judge the extent of the compromise? If Seymour Hersh blows up some nugget of information that he has received will we, in effect, be verifying his story by failing to classify or by removing the classification, and thus increasing the probability that the true and complete story will become public.

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5. The Bill magnanimously states that information obtained from foreign governments or other organizations "may" be classified. However, the stringent requirements for downgrading and declassification provided in another subsection of the Bill appears to rule out the use of information obtained from foreign governments.

D. Pp. 17-25

1. The entire subsection on "Downgrading and Declassification of Official Information" is particularly involved and confusing and would not only be burdensome but could tie the agencies into knots in attempting to meet its requirements. The administrative problems appear to be insurmountable, particularly to the CRS, with millions of documents under its control. It is difficult to see how DDI information could be sufficiently protected if the downgrading and declassification provisions are adhered to.

2. The requirement for automatic declassification of Top Secret material within 36 months, Secret within 24 months, and Confidential within 12 months is totally unrealistic and the requirement (p. 18, (5)) of even earlier downgrading or declassification upon the occurrence of certain events would result in a fantastic amount of time devoted to the downgrading process alone. This is compounded by the requirement in (6) on p. 19 that information more than 15 years old be declassified within 12 months of the effective date of this section (presumably the entire Bill). Subsection (7) on p. 20 appears to require that information classified during the 15 year period immediately preceding the effective date of the section be declassified within one year, with the exception of Top Secret material less than three years old and Secret material less than two years old.

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3. The exemption to the stringent declassification procedures appears to apply to Top Secret material only (although all of this is difficult to follow) and is outlined in subsection (8), beginning on p. 20. Even this exemption demands a written determination that the information meets the criteria contained in (A) through (D) of this subsection. This administrative nightmare continues with the requirement at the top of p. 21 that when a determination is made that information does not qualify under the exemption criteria this must be reported to the Commission in writing (p. 23, (B)) and an Agency official must be named to defend the exemption before the Commission (p. 23, (C)). The Commission review also provides an opportunity for the introduction of politics into its determination of the validity of the exemption since the majority of the Commission members will always be members of the majority party, unless Commission members, as Supreme Court appointees are sometimes wont to do, reverse themselves following their appointment.

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4. The workload involved in downgrading or declassification becomes more unbelievable with the requirement for notification (p. 24, (10)) and that the holders of such information "promptly" note on their copy the new classification. The total authorized strength of the CRS would probably be insufficient to assist the DSB in meeting this requirement, presuming that downgrading or declassification is conducted as required.

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